
In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division

In the matter of:)
KEY AIRLINES, INC.) Chapter 7 Case
Debtor) Number 93-40226

**ORDER ON MOTION OF TIMOTHY B. HOWE AND HOWARD McKINNON
TO AMEND JUDGMENT**

On February 4, 1994, this Court entered a Memorandum and Order on Motion for Contempt concluding in part that:

Howard McKinnon and Timothy Howe deliberately violated this Court's Order of July 21, 1993, as memorialized by written order dated July 27, 1993. Their act of civil contempt has injured the Debtor to the extent of \$8,344.00, the amount of money wrongfully expended in violation of this Court's Order. They may purge themselves of their contempt by paying that sum, together with interest from the date of this Order, at the rate applicable to judgments of the United States District Court.

On February 15, 1994, Howe and McKinnon filed a Motion to Amend Judgment asserting that included in the \$8,344.00 sum was a payment of \$3,144.00 which had ultimately been

returned to the Debtor corporation by the payee. On March 8, 1994, I wrote counsel for Movants setting forth that the motion asserted evidence which had not been included in the record before me, but in which I agreed to reopen the record for a period of 15 days for the submission of additional evidence in support of the Motion to Amend. I further provided that the record would remain open an additional 15 days after such evidence was filed of record for other parties in interest to controvert such evidence. On March 23, 1994, Respondents filed a supplement to the record. No party in interest filed any evidence in contravention of that supplement. Having considered the respondent's supplement to the record, I conclude that the sum of \$3,139.00 which was, in fact, wrongfully paid by the respondents in contravention of the Court's previous order was, nevertheless, returned by the payee and redeposited into the Coastal Bank account of Key Airlines, Inc., on September 10, 1993. Accordingly, I have concluded that the Motion to Amend Judgment should be granted, that my previous finding that the Defendants' contemptuous actions had damaged the Debtor to the extent of \$8,344.00 is erroneous and should be reduced by the sum of \$3,139.00. Accordingly, I amend and republish my Conclusions of Law and Order as set forth herein.

CONCLUSIONS OF LAW

I conclude that Howard McKinnon and Timothy Howe deliberately violated this Court's Order of July 21, 1993, as memorialized by written order dated July 27, 1993. Their act of civil contempt has injured the Debtor to the extent of \$5,205.00, the amount of money wrongfully expended in violation of this Court's Order. They may purge themselves

of their contempt by paying that sum, together with interest from the date of this Order, at the rate applicable to judgments of the United States District Court.

In addition, Timothy Howe is in civil contempt for issuance of the Susan Mason check in the amount of \$919.73. He may purge himself of his contempt by paying that sum, together with interest from the date of this Order, at the rate applicable to judgments of the United States District Court.

ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that Timothy B. Howe and Howard McKinnon are found to be in civil contempt of an order of this Court.

FURTHER ORDERED that they may purge themselves of their contempt by paying \$5,205.00, together with interest from the date of this Order, at the rate applicable to judgments of the United States District Court, to A. Stephenson Wallace, Chapter 7 Trustee for Key.

FURTHER ORDERED that Timothy Howe may purge himself of separate contempt by paying \$919.73, together with interest from the date of this Order, at the rate applicable to judgments of the United States

District Court, to A. Stephenson Wallace, Chapter 7 Trustee for Key.

It further appears that the Trustee, by letter dated May 27, 1994, opposed the Motion to Amend the Judgment and asserted as a basis for his opposition the fact that neither respondent has paid any sums to the Trustee in response to the Order entered on February 4, 1994. The Trustee therefore opposed amendment of the motion "based upon their failure to even pay the undisputed amount to the Trustee." Counsel for the respondents replied contending that this Court's March 8, 1994, letter should be construed as a stay of execution of the previous order for the period during which the Motion to Amend was under consideration by the Court. Nothing in the respondents' Motion to Amend sought a stay of execution of that Order and nothing in the letter of March 8, 1994, to counsel specifically dealt with the issue. F.R.Civ.P. 62(b) provides that a court, in its discretion and on such conditions as are proper, may stay the execution of an order or judgment pending disposition of a motion for new trial or motion to amend a judgment under Rule 59. This rule is made applicable to bankruptcy proceedings by F.R.Bankr.P Rule 7062.

I conclude that the question of stay of the Court's earlier order was neither presented to nor acted on by this Court. Nevertheless, respondents' failure to remit the apparently undisputed portion of the amounts ordered to be repaid to the Debtor is not a sufficient legal basis on which I can refuse to amend my previous order. However, that conduct borders on a separate act of contempt. Since the Court has now ruled on the Motion to Amend, any failure to remit the sums required, in order for respondents to purge

themselves, will, if brought to the attention of the Court, be the subject of a further Citation and Order requiring respondents to show cause why they should not be separately held in contempt of court for that failure.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of June, 1994.